IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 374 OF 2004

Syndicate Bank,
A body corporate constituted
Under the Banking Companies
(Acquisition & Transfer of
undertakings) Act V of 1970
with its Head Office at
Manipal and Branch Office at
Vasco-da-Gama, Goa ... Applicant

versus

1. M/s Aqua Bakers Pvt. Ltd.,
   A company incorporated
   under the Companies Act,
   1956 and Having its
   registered office at C/2,
   Dharmanand Kossambi Building,
   Swantantra Path,
   Vasco-da-Gama, Goa.

2. Economic Development Corporation
   of Goa, Daman & Diu Ltd.,
   a Company incorporated under the
   Companies Act, 1956, and having
   its registered Office at EDC
   House, Dr. Atmaram Borkar Road,
   P.B.No.316, Panaji, Goa. ... Respondents

Mr. S. G. Dessai, Senior Counsel with Mr. S. D. Padiyar, Advocate for the Applicant.

Mr. S. K. Kakodkar, Senior Counsel with Mr. Joel D'Souza, Advocate for Respondent No.1.

Ms. P. Bharne, Advocate for Respondent No.2.

CORAM : S.A.BOBDE &
N.A.BRITTO, JJ.

DATE : 20TH JULY, 2004.

ORAL ORDER(PER S. A. BOBDE, J.)

The Respondent/Bank has applied for the introduction for permission to bring additional evidence on record under O 41 R 27 of the Code of Civil Procedure. This evidence consisted of certain documents which according to the Bank demonstrated that the Plaintiffs had agreed to settle their dues along with the dues of certain Group Companies and withdraw the present First Appeal. Apparently, another application was made earlier by the Bank praying for dismissal of the Appeal on the ground that the application was withdrawn with liberty to file an appropriate application which is the present application.

2. Mr. S. K. Kakodkar, learned Senior Counsel for the Plaintiffs strongly objected to the said application being allowed or even being considered. According to the learned Counsel, O 41 R 27 only allows the Court to bring on record evidence which was in existence when the suit was instituted and which could not after the exercise of due diligence be produced earlier.

3. We are unable to accept this submission since 0 41 R 27 also enables the Court to produce additional evidence to be brought on record if, "the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause".

4. We are of the view that if a party wished to bring on record a subsequent development which according to that party disentitles the other party from pursuing the Appeal, it would fall within the meaning of the term or "for any other substantial cause". Having regard to the nature of the document sought to be brought on record, we are of the view that the said application must be allowed and we, therefore, allow the said application.

S. A. BOBDE, J.

N. A. BRITTO,J.

RD.